JD(SF)–36–04
San Francisco, California

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE
The Respondent

and

Cases 20-CA-31486-1
20-CA-31540-1

AMERICAN POSTAL WORKERS UNION,
AFL-CIO, SAN FRANCISCO LOCAL
The Charging Party

Jill H. Coffman, Esq., and *Robert M. Guerra, Esq.*,
of San Francisco, California,
for the General Counsel.

Nicole DeCrescenzo, Esq.,
of Long Beach, California,
for the Respondent.

Mr. Robert Williamson, Local President, APWU
of San Francisco, California,
for the Charging Party.

DECISION

Statement of the Case

CLIFFORD H. ANDERSON, Administrative Law Judge: I heard the above-captioned case in trial in San Francisco, California, on March 18, 2004, pursuant to an order consolidating cases issued by the Regional Director for Region 20 of the National Labor Relations Board on January 26, 2004. The order consolidated two complaints issued by the Regional Director on November 25, 2003, regarding Case 20-CA-31486-1 and on December 22, 2003, regarding Case 20-CA-312540-1. The complaints are based on charges filed by American Postal Workers Union, AFL-CIO, San Francisco Local (the Charging Party or the Union) against the United States Postal Service (the Respondent). The first charge was filed on September 19, 2003 and docketed as Case 20-CA-311486-1. The second charge was filed on October 17, 2003, amended on December 19, 2003, and docketed as Case 20-CA-31540-1. The Respondent filed timely answers to the respective complaints on December 10, 2003 and January 5, 2004,

The complaints allege that the Respondent received requests for information from the Charging Party respecting two matters relevant to a unit of the Respondent's employees represented by the Charging Party and, failed and refused to furnish or unreasonably delayed furnishing the information to the Charging Party, thereby violating Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The answers deny the Respondent violated the Act.

Findings of Fact

Upon the entire record[1] herein, including helpful briefs from the Respondent and the General Counsel, I make the following findings of fact.[2]

I. Jurisdiction

The Board has jurisdiction over the Respondent by virtue of Section 1209 of the Postal Reorganization Act (PRA).

II. Labor Organization

The record establishes, there is no dispute, and I find the American Postal Workers Union (APWU) is a labor organization within the meaning of Section 2(5) of the Act and the San Francisco Local is an agent of the APWU. I further find that the Charging Party is also a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. Background

The Respondent provides postal services for the United States of America and operates various facilities throughout the United States in the performance of that function, including facilities in San Francisco, California. Pursuant to Chapter 12 of the Postal Reorganization Act the Respondent recognized certain unions as representatives of certain unit of its employees, including the APWU as representative of employees in the following unit (the Unit):

> All full-time and regular part-time employees performing work covered by the terms of the collective-bargaining agreement between the American Postal Workers Union and the Respondent effective for the period December 18, 2001, through and including November 20, 2003.

The Unit is appropriate for bargaining within the meaning of Section 9(b) of the Act and the APWU, by virtue of the PRA and Section 9(a) of the Act, is the exclusive collective-bargaining representative of unit employees.

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[1] The joint motion of the General Counsel and the Respondent to augment the record is granted and Joint Exhibit 1 is received into the record. The General Counsel's motion to correct the transcript is granted.

The General Counsel argued the case orally at the trial's conclusion and filed a post-hearing brief. The Respondent, by means of facsimile electronic transmission, submitted to the Division of Judges a single copy of a post-hearing brief on April 16, 2004, the extended due date for submission of post-hearing briefs. An additional single copy of the brief was submitted on April 19, 2004. Such a submission is not in compliance with Section 102.42 of the Board's Rules and Regulations respecting the means of submission of post-hearing briefs to administrative law judges or the number of copies to be submitted. The non-complying submission therefore has not been considered.

[2] As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

By the terms of the noted contract, the APWU has designated, and the Respondent has accepted the designation of, the Charging Party as the APWU's representative for the purposes of processing and arbitrating certain grievances and bargaining over local issues involving unit employees at the Respondent's San Francisco, California facilities.

B. Events

1. Relevant to Case 20-CA-31486-1

One of the Respondent's San Francisco facilities is the vehicle maintenance facility. Unit employees are employed at the facility including Mr. Robert Black, a storekeeper on the day shift. In July 2003, Supervisor Michael Chin, who worked the swing shift, and Black had an altercation. Black reported the events to his union steward on July 27, 2003, Mr. Ben Wang, who testified:

> [Black] told me that Mr. Chin, he's one of the supervisor[s] [on the two-thirty to eleven o'clock shift], come into the stockroom shouting at him, yelling at him, and cursing. And slam the door. And point the finger at his face, and also throwing parts around.

Mr. Wang discussed the matter with Black and then, on or about July 29, 2003, met with Mr. Wayman Wong, the Vehicle Supply Supervisor and Black's supervisor. The two discussed the Black/Chin events. Wang explained that the Respondent had a "zero tolerance policy" respecting workplace violence. Wang testified he told Wong:

> I told Mr. Wong that I'm filing a grievance. I need information regarding this incident. I want to know any investigation going on in this incident, and also I need to know any disciplinary action or corrective action take[n] against Mike Chin.

Wang further testified:

> I told him that according to Article 14 in the CBA, collective bargaining agreement, and also Post Office have a zero tolerance policy. I very concerned about the safety of the worker in our workplace. And I would like to file a grievance, you know. I have to do that. I need information.

Mr. Wong told Wang that he had no information on the matter but would get back to him. A step-1 meeting was held between the two on August 7, 2003. Wang again asked about any investigation of the incident being conducted by the Respondent and asked for information respecting what disciplinary action was being taken against Chin. Mr. Wong again told Wang he had no information for him, but provided his own report on the incident that he has submitted to the Facility Manager, Mr. Leon Robinson. Wang took the proffered memo[3] and told Wong that he needed the requested information as soon as possible and that it should be provided within five days. Wong told Wang that he would give him a step-1 decision later and try to get the information for him.

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[3] The memo states in part:

> The Post Office has an obligation to [provide] a safe work environment and professional acting Supervisors and Managers. We as Supervisors and Managers should set the standard on correct behavior. If Mike Chin's behavior is not corrected or dealt [with] properly there may be serious consequences.

Mr. Wong testified that after speaking with Wang he sought instruction from his manager who referred him to Mr. Herb Duvernay, a Labor Relations Specialist at the Respondent's San Francisco District Labor Relations Office, regarding what information he could supply to the Union in response to Wang's request for information regarding what investigation management was undertaking respecting the incident and what discipline, if any, was being meted out to Mr. Chin. Mr. Wong testified he was told not to give the Union the information sought and therefore did not do so.

Mr. Duvernay testified he spoke with Wong but that Mr. Wong was unable to explain to him the Union's position on the request. So, too, Duvernay in speaking to Robinson indicated he did not understand the relevancy of the Union's request since the information concerned a supervisor who was not the grievant's direct supervisor.

When a step-1 response from management had not been timely received,[4] Mr. Wang initiated the step-2 of the grievance process on August 15, 2003 by faxing a step-2 Grievance Appeal Form to the Respondent's Labor Relations offices. The form, at items 12 and 13 stated:

> 12. Detailed Statement of Facts/contentions of the grievant
>
> On July 25, 2003 Grievant was assaulted by another employee, Michael Chin, T-3 VMF Supervisor. The assault was witnesses by VMF Supervisor, Waymon Wong. Mr. Wong wrote a memo (see attached) to Leon Robinson, VMF Manager, in which he fully and completely detailed the nature and seriousness of the assault. On July 28th Grievant was told by his supervisor and manager that action would be taken because of the seriousness of the case. These statements were later repeated. He was also told an Inspector would interview him because of the seriousness of the case, none has. The only apparent action taken has been requiring VMH craft staff employees to watch a USPS video on violence in the workplace.
>
> 13. Corrective Action Requested
>
> The USPS Zero Tolerance policy must be completely followed and fully enforced. And, at the very minimum: Supervisor Chin be removed from supervising craft employees, and Supervisor Chin be given a thorough fitness for duty examination to insure that he does not pose a threat to himself and others.

A step-2 meeting was held between Bob Williamson, the Charging Party President, and Keith A. Patterson, the Respondent's Supervisor of Transportation Operations and step-2 designee, on August 29, 2003. On September 4, 2003, the Respondent denied the grievance in a written decision stating in part:

> <u>Management's Position</u>
> It is Management's position that when Leon Robinson the Manager of Vehicle Maintenance issued disciplinary action to Supervisor Michael Chin, management has taken what it considers appropriate action as it relates to this incident.

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[4] The step-1 summary was issued on August 18, 2003. In the box for "Management's Position" is the entry:

> Corrective action has been implemented to the Shop Supervisor who lost control of his temper. Management does not need to disclose to the union what corrective action has been taken according to ELM Section 650.

Step-2 Decision

By issuing that action Management has demonstrated its compliance with the USPS Zero Tolerance Policy. As far as this remedy is concerned management "sustains" this portion of the grievance.

Management further asserts that by taking action against Supervisor Michael Chin it has thoroughly investigated this incident and has rendered the appropriate actions. The Union has no authority to dictate the removing a supervisor from his position as a supervisor, nor has it the authority to require management to require a fitness for duty for Supervisor Michael Chin. This portion of the requested remedies is denied.

There is no dispute Williamson renewed his request for the information at this meeting or that Patterson, having earlier spoken to Wong and the Respondent's Labor Relations office and having been instructed not to provide the requested information, refused to provide it to Williamson.

Having not received the information he sought, on September 19, 2003, Wang faxed to Ms. Glenda Dunmore, the Respondent's Manager of Labor Relations, a request for information in conjunction with the "USPS Failure to Act in an Assault Case" seeking:

1) A copy of any disciplinary action taken against Supervisor Michael Chin for his assault on another postal employee on July 5, 2003.

2) A copy of the administrative investigation made by the USPS on this assault.

3) A listing and copy of all records of prior incidents of violence by Michael Chin during his employment in the Postal Service.

4) A detailed and specific explanation why I have been denied this information necessary to processing this grievance.

On September 22, 2003, Mr. Herb Duvernay, in the Respondent's Labor Relations Office, denied Wang's request and attached a letter stating in part:

In an effort to respond to your request, please provide us with an explanation that will demonstrate specifically the relevancy of this request for this information. The information that you requested does not fall under article 31 Section 3 of the Collective Bargaining Agreement as outlined in the current [sic] as it pertains to non-bargaining unit employees[s]. The Agreement does not dictate to Management as to how EAS employees will be disciplined.

Furthermore, if this issue is for an incident that took place on July 25, 2003 between management and a craft employee it is untimely as outlined in Article 15 Section 2 of the Agreement.

Please identify the relevance for this information as it pertains to a violation or potential violation of the current agreement so that we may furnish it to you.

The Charging Party appealed the step-2 decision to arbitration on September 24, 2003.

On October 2, 2003, Williams wrote to Duvernay concerning the Union's information request for grievance F00V4FC0310868 explaining the relevance of the information sought as relating to an unsafe and threatening environment for bargaining unit employees. The letter denied that the information requests were untimely since "they have been part of a timely grievance from the start" and asked for the requested information within 72 hours.

Mr. Lewis Adams, a Labor Relations' Specialist for the Respondent, faxed to Williamson on October 20, 2003, a letter stating that Williams was a digit short in identifying the grievance number and asking that a correct number be supplied. Mr. Williams testified that when he received the note, he called Adams within a day or two and the two spoke about the grievance with Williams providing the corrected grievance number and repeating his request for the information. Mr. Lewis Adams did not testify,[5] but his statement recites that he never received a corrected grievance number from Williams at any time

Mr. Duvernay testified that he eventually spoke to Williamson about the information request and knew that the Union sought Chin's discharge given the Respondent's policies on workplace violence, but remained of the view the requested information was not relevant and continued to refuse to disclose it. Williamson testified that the Union has not ever received the information requested.

2. Relevant to Case 20-CA-31540-1

Ms. Perlita Deguia was at relevant times a mail processing clerk in the bargaining unit working the 2:30 pm to midnight shift at the Evans Avenue, San Francisco facility. Her supervisor was Mr. John Norman, the Supervisor of Distribution Operations. Mr. Kris Hubbard was also a supervisor on that shift. On July 20, 2003, Deguia and Hubbard had an encounter. Ms. Deguia complained to Union Steward, Jimmy Teodoro, that she had been holding on to a mail cart and Hubbard had shaken the cart injuring Deguia and accusing Deguia of sleeping on the job while holding onto the cart. Two days later, Deguia and Hubbard had an incident in the parking lot. Deguia reported that she had been called derogatory names by Hubbard and called the Postal Inspectors who spoke to her and referred her to her union steward, Teodoro. A few days later, Mr. Teodoro spoke to the Postal Inspector who indicated the second incident was under investigation, but that Deguia's report of the first event was not credible.

On August 2, 2003, Ms. Deguia received a letter of warning for "committing an unsafe act -- falling asleep while casing manual flats." The letter asserted in part: "I must warn you that future deficiencies will result in more sever disciplinary actions being taken against you. Such action may include suspensions, reductions in grade, pay or removal from the Postal Service."

Steward Teodoro initiated step-1 grievance procedures on August 13, 2003, meeting with Norman. The two discussed the Hubbard–Deguia incident and the two individuals' respective versions of events including Deguia's assertion that Hubbard had caused the cart to strike her and caused her injury. Norman denied the grievance, telling Teodoro that supervisor

[5] The Respondent attempted to introduce a declaration of Lewis, Respondent's Exhibit 1, that the correct grievance number was never received from Williamson by him at anytime. Counsel for the Respondent offered the document in lieu of testimony asserting: "Mr. Adams is now stationed in Nevada, and for that single question, the agency did not bring him here today." I rejected the tender, sustaining the initial hearsay objection of the General Counsel. Thereafter the parties agreed that the exhibit should be received into evidence and would constitute substantive assertions of Adams in lieu of his testimony.

Hubbard was telling the truth and that Deguia was simply sleeping on the job. That same day, Teodoro took the matter to step-2 by filing a grievance appeal form which alleges: "The letter of Warning that was issued to the grievant was punitive, not corrective and lack[s] just cause." The grievance demanded the warning letter be rescinded.

A step-2 meeting was held between Teodoro and the Respondent's Manager for Distribution Operations, Jesse Planos, in or about the first week of September. Teodoro asserted that Deguia had received discipline, but that the supervisor, Hubbard, who injured Deguia, was not disciplined. Teodoro testified that Planos told him that Hubbard had received discipline for a different violation.[6] Teodoro then told Planos that he wanted to know what disciplinary action had been issued to Hubbard. He denied the step-2 grievance. Teodoro told Planos he needed the discipline given Hubbard to be included in his appeal to the third step in the grievance procedure and that it was a request for information. Mr. Planos told Teodoro to make the request in writing.

On September 17, 2003, the Respondent denied the step-2 grievance finding the letter of warning issued for just cause. By letter dated September 24, Teodoro submitted to Planos proposed "corrections and additions" to the step-2 decision. It states in part:

> Union contends that:
>
> When the grievant contacted the postal inspector about the incident on July 20, 2003, the grievant was given a letter of warning while the supervisor that did the unsafe act was not given a disciplinary action by management meaning there was disparity of treatment involved.
>
> Management was not deny that the supervisor shook the utility care that hit the grievant when he observed that the grievant was sleeping at the manual case to wake her up. It's the management responsibility to ensure employees are working in a safe manner while management can react by harming the employee.
>
> In the LOW, the grievant was interviewed on July 22, 2003 (see exhibit# 1) but the grievant was off the clock, so, how can management interview an employee off the clock.
>
> In the LOW it states that supervisor Hubbard knew that the grievant was asleep at eleven o'clock, (see exhibit 2) why does the supervisor have to wait for another thirty minutes before he shook the U-cart and wake-up the grievant.
>
> These was no witness that states the grievant was sleeping at the time of the incident (see exhibit #3.
>
> The LOW was issued so that supervisor can harass employees who were filing worker's compensation.

Steward Teodoro also sent Mr. Planos a written request for information concerning the grievance on September 24, which was received on September 25, 2003. It sought: "[A] copy of any disciplinary action given to SDO Kris Hubbard regarding the incident that happened on

[6] In fact the letter of warning issued to Hubbard involved a later incident arising out of the same Hubbard/Deguia contretemps.

July 20, 2003, and a copy of the Investigative Memorandum by police inspector." Mr. Planos testified he did not provide the information but rather spoke with his superior, Senior Manager of Distribution, A. J. Catalano. Planos and Catalano agreed the information request should be denied. The request was returned to the Union marked "Request Denied" by A.J. Catalano, in his position as the Senior MDO Supervisor on the shift, on September 25, 2003, with the notation: "This matter is not covered under union's right."

Mr. Teodoro passed the matter to Steve Kwok, chief steward for the processing and distribution center swing shift. Mr. Kwok sent to Catalano a "Request for Information – Kris Hubbard" with the following text:

> The Union is in receipt of the attached request for information denied by you.
>
> The Union is conducting investigation to determine whether T-3 management is practicing unequal enforcement of postal work rules. Union believes that craft employees are routinely given discipline for "unsafe acts", "unacceptable conduct" and "assault" even when accidents occurred due to unsafe conditions Union contends that the same rule was not enforced whenever management personnel is involved.
>
> The information requested is relevant and necessary for the investigation and processing of this grievance.
>
> It is an unfair labor practice to deny relevant and necessary information needed by the Union to fairly and fully represent its bargaining unit employees in the collective bargaining process.
>
> Please provide the information as soon as possible.

On October 9, 2003, Catalano answered Kwok by letter with the following text, in part:

> I am in receipt of your letter dated October 7, 2003; however, the union is required to state the exact necessity for the information and how the information is relevant to union activities. The union failed to meet these requirements.
>
> There is a concurrence between us that in this instance: the type of disciplinary action is not the same, as supervisors are held to a higher standard.
>
> I am willing to meet with you to discuss the same actions being equal for all employees. This meeting will also give you an opportunity to review all documents, which are believed to be relevant to union activities.

Messrs. Kwok and Catalano met on October 10, 2003. Neither individual testified although each subsequently sent the other a confirming letter. Kwok's letter dated October 10, 2003, is captioned "Request for Information – Kris Hubbard CONFIDENTIAL" and states in part:

> This refers to my meeting with you today on the subject matter.
>
> During the meeting I was allowed to review paperwork on two actions issued against supervisor Kris Hubbard, i.e. proposed removal action issued on 9/11/03 for performance deficiency, and a letter of warning dated 8/26/03 for unacceptable conduct relating to the U-cart injury incident to craft employee Perlita Deguia. You stated that my letter of October 7, 2003 provided relevancy 'sufficient enough' for you to show me the

> information but 'not enough' to give me a copy. You however did not provide any reasoning for your characterization of the differences.
>
> Nonetheless, the Union contends that a copy of the 8/26/03 letter of warning, and a copy of the Investigative Memorandum shall be provided as it directly relates to the employee's complaint about the assault and the Union's investigation on disparate enforcement of the postal work rules and policies. . . .

Mr. Catalano received the October 10, 2003 letter and responded by letter of October 14, 2003, stating, in part:

> It was at this meeting at which I explained it is the responsibility of the union to provide relevancy before obtaining copies of an individual supervisor's records. It was my statement that as requirement to obtaining individual supervisor records that the union show sufficient enough evidence that those records would be relevant to an investigation, grievance or complaint. I also stated your previous request did not show relevancy.
>
> At this point in time, I am not aware of any complaint filed by Ms. Deguia of an alleged instant or any grievance activity concerning that incident.
>
> * * * *
>
> At our meeting of October 10, 2003, you stated you understood the need to keep personal information confidential. If you could provide a complaint number or grievance number, something that indicates as part of your investigation and explain as to the relevancy of the supervisor's records in that investigation, it would be clear why those records were necessary.

On October 19, 2003, Teodoro sent Planos another request for information titled: "Request for Information and Documents Relative to Processing a Grievance". The request sought "a copy of any disciplinary action given to SDO Kris Hubbard regarding the incident that happened on July 20, [2003] and a copy of the Investigative Memorandum by police inspector." The request also provided a grievance number respecting the Deguia disciplinary action.

On December 15, 2003, the Respondent's Labor Relations officer, Herb Duvemay, under instruction from the Respondent's Law Department, sent Teodoro the Respondent's letter of warning to Hubbard dated August 26, 2003 and the Postal Inspection Incident Report dated, August 7, 2003.

C. Analysis and Conclusions

1. Threshold Arguments

The Respondent pleads as affirmative defenses that a requirement to yield the requested information is: (1) inconsistent with the Provisions of the Postal Reorganization Act and (2) barred by the Privacy Act of 1974 and its implementing regulations. The General Counsel argues that these defenses are, and have been on numerous occasions, specifically rejected by the Board and by now must be simply regarded as outworn shibboleths demonstrating the failure and refusal of the Postal Service personnel, even within its legal department, to accept Board law citing *United States Postal Service*, 310 NLRB 391 (1993); *United States Postal Service,* 309 NLRB 309 (1992); *United States Postal Service,* 301 NLRB 709 (1991), enfd. 888 F.2d 1568 (11th Cir. 1989); *United States Postal Service,* 289 NLRB 942, 944-945 (1988).

The General Counsel's citations are dispositive. These Respondent arguments have repeatedly and specifically been rejected by the Board[7] and may now rise to the level of frivolity or bad faith. The Respondent's arguments are rejected.

2. The Standard for Disclosure

In *NLRB v Postal Service*, 841 F.2d 141, 144 (1988), the Court summarizing basic law on the duty to furnish information held:

> Generally, an employer's duty to bargain collectively established in Section 8(a)(5) of the National labor Relations Act obligates it to provide a labor organization with relevant information necessary for the proper performance of the union's duties as the employees' bargaining representative. *Detroit Edison Co. v, NLRB*, 440 U.S. 301 (1979); *NLRB v. Acme Industrial. Co*., 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956). The failure to provide such information constitutes an unfair labor practice in violation of Section 8(a)(1) and (5) of the Act.

In *United States Postal Service*, 310 NLRB 391 (1993), the Board dealt with information requests for information concerning supervisors. The Board noted at 391-392:

> Requests for information relating to persons outside the bargaining unit require a special demonstration of relevance. Thus, the requesting party must show that there is a logical foundation and a factual basis for its information request. The standard to be applied in determining the relevance of information relating to nonunit employees is, however, a liberal "discovery type standard." *NLRB v. Acme Industrial. Co*., 385 U.S. 432 (1967). In applying this standard, the Board need find only a probability that the requested information is relevant and would be of use to the union in carrying out its statutory responsibilities.

The Board has rejected the argument that supervisor's disciplinary records are, by their very nature, confidential and may be withheld. *United States Postal Service*, 289 NLRB 942 (1988) and *United States Postal Service*, 301 NLRB 709 (1991) enfd. 888 F.2d 1568 (11th Cir. 1989).

3. Case 20-CA-31486-1

The General Counsel, during oral argument and on brief, argues that the Board's standard in *United States Postal Service*, 310 NLRB 391 (1993), regarding relevance relating to persons outside the unit has been clearly met in the Chin incident. All parties at all relevant times knew that the Union was unhappy with Chin's violent conduct toward unit employees and that the Union wanted the Respondent to address this situation.

It is simply beyond argument that a supervisor's violent or erratic activities in dealing with unit employees are a legitimate matter of concern to the Union and a proper subject for it to investigate. The physical and psychological safety of employees in the workplace is always a relevant matter irrespective of official policies respecting workplace violence.

[7] See, for example, *United States Postal Service*, 310 NLRB 391 (1993), 392, fn. 5 at 392, reviewing the cases in which the "same arguments have been repeatedly rejected by the Board and the courts."

It is also simply beyond argument that the Union's requested information, i.e. what the Respondent was doing to or had done to investigate and deal with the Chin incident, was relevant to the safety of unit employees, including unit member Robert Black, and that the Respondent's agents involved with the information request reasonably should have known that was true from the undisputed facts then before them. Indeed the facts described above make it clear that at all times the relevance of the requested information was self evident from the nature of the grievance and expressly explained by Union's agents throughout the process.

Given all the above, I find that the Respondent's denial of the request for the information noted was improper and a violation of Section 8(a)(5) and (1) of the Act. I sustain this allegation of the complaint.

4. Case 20-CA-31540-1

The analysis of the request for information respecting Supervisor Hubbard is the same as that involving Supervisor Chin above. The Union's unit member received discipline arising out of an incident involving Mr. Hubbard. The information requested goes to the Respondent's investigation of the events and its actions against Hubbard's and therefore directly relates directly to a unit employee's discipline and the Union's grievance respecting that discipline. I further find, as above, that the Respondent's agents knew or reasonably should have known why the information sought was relevant to the Union's grievance from the facts they were aware of at all relevant times.

Production of the two documents involved herein was first requested on August 13, 2003, and repeatedly requested thereafter. The August 26, 2003, letter was shown to the Union at the meeting described above on October 10, 2003, but the Union's agent was not allowed to retain a copy and was denied all access to the Incident Report. The two documents were provided the Union for the first time on or about December 15, 2003.

The Respondent pleads as affirmative defenses that, to the extent the information had been supplied, the issues of the complaint are rendered moot, the matter remedied, and, the Respondent argues further, any further proceedings would be a waste of the Board and the Respondent's limited resources. The General Counsel argues that the September 25 to December 15 delay in providing the information is inexcusable and undermines the Union's timely processing of grievances and saps the resources of the Union by requiring that cases be processed for longer periods and into higher levels of the grievance processing system. Counsel for the General Counsel cites *Beverly California Corp*., 326 NLRB 153, 157 (1998) for the proposition that a 2-month delay in providing information violated the Act and *Good Life Beverages,* 312 NLRB 1060, 1062 fn. 9 (1993). He also cites *United States Postal Service*, 308 NLRB 547 (1991), for the proposition that in evaluating the promptness of the disclosure the Board will consider the complexity of the information sought and the difficulty of provision. Here the information to be disclosed was but a few sheets of paper easily retrieved and disclosed by the employer's agents.

Information requested from the Respondent is used by the Union in investigating situations, determining whether or not to file a grievance, and in handling grievances at the various steps in the grievance and arbitration system. Delay in providing information undermines or defeats the Union's investigative process, diminishes and impedes the grievance processing and requires expenditure of unnecessary time and effort to continue the process without adequate information. The delay in the instant case thwarted the process to a substantial degree and required significant time and effort on the part of the Union to belatedly acquire the information that should have been provided at the onset. I do not find the tardy

provision of the requested information in this case to be a defense to the sufficiency of the allegation or a defense to the violation.

Nor is it relevant that an intermediate request for the information may not have had sufficient reference numbers to identify the matter to which it was related. It is therefore unnecessary to resolve the sub-issue of whether or not the Union supplied the correct grievance number as described above. The initial requests of the Union for the information were improperly denied and the burden was thereafter on the Respondent to reverse its wrongful denial. This the Respondent simply did not do. Since it never supplied the documents during the period at issue, it is therefore immaterial whether additional requests in that period were made.

Further, the earlier showing, but not providing, of one of the requested documents to the Union, in the context of the events herein as described above, was not sufficient to fulfill the Respondent's obligations or defeat the allegation. Had the Respondent wished to limit use of the document or seek agreement on its limited use, it was obligated to raise the matter with the Union and negotiate such an agreement. Since it had not done so, it was obligated to turn over the documents or legible copies.

On the basis of the record as a whole and the analysis immediately above, I find the Respondent was obligated to timely provide the requested documents to the Union and that it failed to do so. I find this conduct violates Section 8(a)(5) and (1) of the Act. I sustain this allegation of the complaint.

REMEDY

Having found that the Respondent violated the Act as set forth above, I shall order that it cease-and-desist therefrom and post remedial Board notices at its San Francisco facilities where unit employees are regularly employed.

The General Counsel throughout this proceeding recurred to the proposition that the Respondent is a repeat offender, advanced regularly rejected defenses in bad faith, takes clearly illegal positions in refusing to provide information to the Union and is generally a recidivist respondent regularly denying the requests of its employees' representatives for appropriate information. Given that the allegations of the complaint have been sustained and the remedy sought by the General Counsel herein directed above, it is unnecessary to consider these arguments. Such allegations would be relevant only if the General Counsel were seeking an extraordinary remedy beyond that sought herein which would be justified or supported by such bad conduct. This being so, it is not necessary to determine if these additional assertions of the General Counsel have been sustained and I shall not address the matter further.

Conclusions of Law

On the basis of the above findings of fact and the record as a whole and Section 10(c) of the Act, I make the following conclusions of law.

1. The Board has jurisdiction over the Respondent by virtue of Section 1209 of the Postal Reorganization Act (PRA).

2. The Charging Party and the APWU are, and have been at all relevant times, labor organizations within the meaning of Section 2(5) of the Act.

3. The American Postal Workers Union, with the Charging Party Local as its agent, represents the Respondent's employees in the following unit, which is appropriate for bargaining within the meaning of Section 9 of the Act:

> All full-time and regular part-time employees performing work covered by the terms of the collective-bargaining agreement between the American Postal Workers Union and the Respondent effective for the period December 18, 2001, through and including November 20,2003

4. The Respondent violated Section 8(a)(5) and (1) of the Act by:

> (a) Failing and refusing to furnish American Postal Workers Union, AFL-CIO, San Francisco Local information that it requested regarding Mr. Michael Chin which is relevant and necessary to its status as agent of the exclusive bargaining representative of the unit of employees set forth above.
>
> (b) Delaying in furnishing American Postal Workers Union, AFL-CIO, San Francisco Local documents respecting the Ms. Perlita Deguia grievance that it requested which is relevant and necessary to its status as agent of the exclusive bargaining representative of the unit of employees set forth above.

5. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

ORDER

Based upon the above findings of fact and conclusions of law, and on the basis of the entire record herein, I issue the following recommended Order.[8]

The Respondent, the United States Postal Service, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish American Postal Workers Union, AFL-CIO, San Francisco Local information that it requested regarding Mr. Michael Chin which is relevant and necessary to its status as agent of the exclusive bargaining representative of the unit of employees set forth above.

(b) Delaying in furnishing American Postal Workers Union, AFL-CIO, San Francisco Local information respecting the Ms. Perlita Deguia grievance that it requested which is relevant and necessary to its status as agent of the exclusive bargaining representative of the unit of employees set forth above.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

[8] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Promptly furnish American Postal Workers Union, AFL-CIO, San Francisco Local the information it requested respecting Mr. Michael Chin.

(b) Preserve and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all records, including an electronic copy of such records if stored in electronic form, necessary to determine if the terms of this Order have been complied with.

(c) Within 14 days after service by the Region, post copies of the attached Notice set forth in the Appendix[9] at all of its San Francisco facilities at which employees in the bargaining unit set forth above are regularly present. Copies of the notice, on forms provided by the Regional Director for Region 20, in English and such other languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted in each of the facilities where unit employees are employed. Reasonable steps shall be taken by the Respondent to ensure the notices are not altered, defaced or covered by other material. In the event that, during the pendency of these proceedings, the Respondent has closed one or more of the facilities where notice posting has been directed, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facility at any time after November 2003.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, San Francisco, California, May 11, 2004.

ca

Clifford H. Anderson
Administrative Law Judge

[9] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

We give our employees the following assurances.

WE WILL NOT fail and refuse to furnish American Postal Workers Union, AFL-CIO, San Francisco Local, information that it requested which is relevant and necessary to its status as agent of the exclusive bargaining representative of certain of our employees.

WE WILL NOT delay in furnishing American Postal Workers Union, AFL-CIO, San Francisco Local, information that it requested which is relevant and necessary to its status as agent of the exclusive bargaining representative of certain of our employees.

WE WILL NOT in any like or related manner violate the National Labor Relations Act.

WE WILL promptly furnish American Postal Workers Union, AFL-CIO, San Francisco Local, the information it requested respecting Mr. Michael Chin.

The American Postal Workers Union (APWU) is the representative of employees in the following unit (the Unit):

> All full-time and regular part-time employees performing work covered by the terms of the collective-bargaining agreement between the American Postal Workers Union and the Respondent effective for the period December 18, 2001, through and including November 20, 2003.

THE UNITED STATES POSTAL SERVICE

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

901 Market Street, Suite 400, San Francisco, CA 94103-1735
(415) 356-5130, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUSTNOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THISNOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (415) 356-5139.

THIS NOTICE AND THE DECISION IN THIS MATTER ARE PUBLIC DOCUMENTS

Any interested individual who wishes to request a copy of this Notice or a complete copy of the Decision of which this Notice is a part may do so by contacting the Board's Offices at the address and telephone number appearing immediately above